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No. 89-1727

In The

Supreme Court Of The United States

OCTOBER TERM, 1989

DEBORAH JEAN SAPIA,
Petitioner,

v.

CHARTER MARKETING COMPANY, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS HARTFORD HOSPITAL, RICHARD J. LAWSON AND MARGE RAMSDELL IN OPPOSITION TO THE PETITION

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I. PRELIMINARY STATEMENT

The petitioner has filed a petition for writ of certiorari, seeking review of two decisions issued by the Court of Appeals for the Second Circuit in Case Nos. 89-7658 and 89-7850 on December 18, 1989 and

February 7, 1990, respectively. This brief in response to the petition for writ of certiorari is respectfully submitted on behalf of respondents Hartford Hospital,[1/] Richard J. Lawson and Marge Ramsdell. The brief addresses the petition for writ of certiorari only insofar as it relates to Case No. 89-7658, as that is the only case in which the respondents Hartford Hospital, Richard J. Lawson and Marge Ramsdell were parties.

II. COUNTER-STATEMENT OF THE CASE

This action was commenced by the petitioner in the District of Connecticut in December, 1987. By her original

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1/ Hartford Hospital is a non-stock corporation. The sole voting member of Hartford Hospital is Hartford Health Care Corporation.

Complaint dated December 14, 1987 and by her Second Amended Complaint dated December 30, 1988, the petitioner asserted a plethora of federal and state law claims against twenty-six defendants. The Second Amended Complaint consisted of three hundred two counts against the various defendants. The Second Amended Complaint purported to state claims for violations of the first, fifth and fourteenth amendments to the United States Constitution; Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681e et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.; and various other civil rights laws (42 U.S.C §§ 1983, 1985, and 1986). In addition, the petitioner asserted various state law claims, including assault, civil conspiracy

to defame or inflict mental distress, slander, libel, negligence, fraud, fraudulent concealment, breach of contract, intentional interference with contractual relations, and intentional infliction of emotional distress.

As set forth by the Court of Appeals for the Second Circuit in its decision dated December 18, 1989, "[b]roadly speaking, the gravamen of [petitioner's] charges is that beginning in 1970 she has been the victim of a widespread conspiracy to deprive her of employment and of the opportunity for employment." ("Joint Appendix," at 108). With respect to the respondents Hartford Hospital, Richard J. Lawson and Marge Ramsdell, the petitioner alleged that she was hired by Hartford Hospital on June 1, 1981 and that one or more unidentified employees of Hartford

Hospital had "written or verbal communications with plaintiff's prior employers, or other unknown parties" concerning her prior employment. (Second Amended Complaint, ¶¶ 94 and 95; R. 1 and 110).[2/] Such communications allegedly contained "false and defamatory" information. (Second Amended Complaint, ¶ 96; R. 1 and 110).

Petitioner further contended that during her employment at Hartford Hospital she was singled out for discriminatory treatment. (Second Amended Complaint, ¶¶ 97 and 98; R. 1 and 110). She asserted that she was given a "highly subjective and

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2/ All references to the record on appeal to the Second Circuit shall be noted by "R." followed by the Document Number as found on the Second Circuit's Index to Record on Appeal, and the page number of the document where applicable.

antagonistic" performance review by respondent Marge Ramsdell, an employee of Hartford Hospital, and that she was subjected to "unwarranted and unsupported verbal abuse" at conferences with respondents Marge Ramsdell and Richard J. Lawson, another employee of Hartford Hospital. (Second Amended Complaint, ¶¶ 99 and 100; R. 1 and 110). Petitioner claimed that "[f]aced with termination, [she] was forced to resign her employment at Hartford Hospital on November 11, 1981." (Second Amended Complaint, ¶ 103; R. 1 and 110). She contended that the actions of respondents Hartford Hospital, Richard J. Lawson and Marge Ramsdell "were done in furtherance of a conspiracy, the purposes of which were: to deprive or infringe upon the plaintiff's rights of free speech, association, due process and equal

protection; to defame the plaintiff; and to deprive plaintiff of her liberty and property interest." (Second Amended Complaint, ¶ 104; R. 1 and 110).

Upon the filing of motions to dismiss and/or motions for summary judgment by various defendants, including Hartford Hospital, Richard J. Lawson and Marge Ramsdell, the district court granted such motions in favor of the defendants in lengthy and comprehensive rulings issued on October 11, 1988 and March 8, 1989. (See "Joint Appendix," at 1-105). On June 1, 1989, the district court entered final judgment in favor of defendants Credit Bureau Services, Charter Marketing Company, George Young, Earl Kight, Jr., John S. Gutman, Richard J. Lawson, Hartford Hospital, Marge Ramsdell, Capitol Credit Company, Jack Smith and Frank Mozzicato. On July 21, 1989, the district court

entered final judgment in favor of defendants Connecticut National Bank, John F. Stockinger and Oswald Anthony Sherwood. The district court entered final judgment in favor of defendants Olson, Coburn, Meredith and Coburn and Meredith, Inc. on October 6, 1989.

Petitioner separately appealed each final judgment entered by the district court to the Court of Appeals for the Second Circuit (Docket Nos. 89-7658, 89-7850 and 89-7888, respectively.) By decision dated December 18, 1989 in Case No. 89-7658, the Court of Appeals for the Second Circuit affirmed the judgment of the district court. (See "Joint Appendix," at 106-11). By decision dated February 7, 1990 in Case No. 89-7850, the Court of Appeals for the Second Circuit affirmed the judgment of the district court. (See

"Joint Appendix," at 112-13). Case No. 89-7888 is still pending before the Second Circuit Court of Appeals and is not at issue in the pending petition proceedings.

On or about March 15, 1990, petitioner attempted to file a petition for writ of certiorari with this Court regarding Case Nos. 89-7658 and 89-7850. The Clerk of the Court rejected the petition because the petition did not comply with the Rules of the Supreme Court. The Clerk directed petitioner to file corrected copies promptly. Nearly two months later, on May 8, 1990, the petitioner filed the instant petition.

III. ARGUMENT

In her petition, the petitioner presents five questions for review. None of these questions presents the "special and important reasons" necessary for

review.[3/] Moreover, the petitioner's questions are vague, argumentative, repetitious and are not expressed in the terms and circumstances of the case. The specific deficiencies of each individual question are discussed below.

In addition, the petitioner inaccurately describes the facts in her "Statement of the Case" and "Arguments in Support of Petition," and devotes most of her petition to arguing her case for a third time rather than presenting to this

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3/ Rule 10.1 of this Court expressly states that "a petition for a writ of certiorari will be granted only when there are special and important reasons therefor." While the considerations specifically set forth in Rule 10.1 are not intended to be exhaustive, the five questions posed by the petitioner do not in any way raise the kind of issues set forth as examples in that Rule.

Court, with "accuracy, brevity and clearness," an appropriate basis for an understanding of the points requiring consideration. Supreme Court Rule 14.5 provides:

> The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

On this basis alone, the petition should be denied.

The first question proposed by the petitioner asks whether a person who has been "blacklisted" has a constitutional right to redress. This question is argumentative as well as extremely vague, leaving the Court and the respondents only to guess what petitioner means by "blacklisting" and to what type of "constitutional redress" she is referring. Additionally, the question is not at all

"expressed in the terms and circumstances" of the petitioner's case as required by Rule 14.1(a) of this Court, but merely asks whether there is a right to constitutional redress if a hypothetical "blacklisting" has occurred. Finally, although the petitioner's Second Amended Complaint contained vague allegations concerning "blacklisting" by the defendants, petitioner did not raise, either at the district court level or before the Court of Appeals for the Second Circuit in Case No. 89-7658, any specific claim for "constitutional redress" like the one she is apparently attempting to raise in question one.

The petitioner's second question asks this Court to define the "practical parameters of the 'special circumstances' the Courts have noticed in allowing a

relazation [sic] of the statutes of limitation." Again, the petitioner has failed to express this question in the terms and circumstances of her case as required by this Court. Additionally, the answer to this question necessarily depends upon the specific facts and circumstances of each case. The District Court thoroughly examined the facts and circumstances of this case as demonstrated by its lengthy opinions set forth in the "Joint Appendix" submitted by the petitioner. In its discretion, this Court should deny certiorari when review is sought on an issue which turns solely upon an analysis of the particular facts involved. "[The Court] do[es] not grant a certiorari to review evidence and discuss specific facts." United States v. Johnston, 268 U.S. 220, 227 (1925).

The third question that petitioner

poses for review is, "if a plaintiff, for reasons beyond her control, is prevented from obtaining private counsel and is forced to proceed pro se, does denial of pro bono counsel by a Court amount to a breach of due process and equal protection of the laws?" This question is totally inappropriate for Supreme Court review for several reasons. First, the question borders on the frivolous, since, in her appeal to the Court of Appeals for the Second Circuit in Case No. 89-7658, the petitioner never even raised a claim that the denial of pro bono counsel violated any right to due process or equal protection. Second, the question is argumentative and based on a factual misstatement. As discussed below, the plaintiff was never "prevented" from obtaining private counsel, nor was she ever "forced" to proceed with her claims pro se. Thus, the question

is entirely based on a misstatement of fact.

The petitioner's fourth question for review asks whether certain unidentified "elements" of the lower courts' reasoning were prejudicial and discriminatory toward the petitioner. Once again, the petitioner has utterly failed to phrase her question in terms of the facts and circumstances of her case and has left the Court and the respondents guessing as to the specific "elements" which form the basis for her claim. To the extent, however, that this fourth question is addressed to the district court's decision not to toll the applicable statutes of limitation and to the denial of petitioner's second application for pro bono counsel, the fourth question is merely a vaguely worded repetition of questions two and three, and is inappropriate for the reasons discussed above.

In her fifth question, the petitioner asks whether "certain actions of the lower courts constitute breaches of due process and equal protection of the laws." Again, rather than phrasing her question in terms of the facts and circumstances of her case, petitioner has posed a question which is entirely vague and which gives no indication whatsoever of the specific "actions" which form the basis for her inquiry. Moreover, like the preceding question, to the extent petitioner's queries regarding breaches of due process and equal protection refer to the district court's decision not to toll the applicable statutes of limitation and to the denial of petitioner's second application for pro bono counsel, the fifth question is merely a vague restatement of the second and third questions and is inappropriate for the

reasons discussed above.[5/]

In addition to the fact that all of the petitioner's questions are inappropriate on their face, respondents respectfully direct this Court's attention to certain misstatements of law and fact made by petitioner in her petition which underscore the inappropriateness of petitioner's questions. For example, on page nine of her petition, the petitioner claims that the courts below "unjustifiably failed to

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5/ In the argument in support of her petition, the petitioner also claims that the "District Court Judge allowed attorney abuses such as unreasonable delay by using 'vacation' three times, late filing of supporting memorandum after the motion had been filed, and failure to comply with a motion to compel production." (Petitioner's Brief, at 11). These issues were not even raised by the petitioner in her appeal in Case No. 89-7658. Thus, to the extent such issues form the basis for question five, the question is entirely inappropriate for review.

take judicial notice of petitioner's just cause reasons for relaxation of the statutes of limitation." The district court, however, carefully considered the petitioner's allegations concerning the tolling of the applicable statutes of limitation, and found that petitioner had done nothing more than make vague, conclusory and unsupported allegations concerning any basis for tolling the statutes of limitation. (Ruling on Motions to Dismiss, dated October 11, 1988, "Joint Appendix," at 14-15, 17, 25, 44-45; Ruling on Pending Motions, dated March 8, 1989, "Joint Appendix," at 80-84). Further, as even a cursory review of Federal Rule of Evidence 201 reveals, the concept of "judicial notice" is entirely inapplicable to the types of claims pressed by petitioner.

Additionally, on pages eleven and twelve of her petition, the petitioner asserts that:

> [o]n February 13, 1989, [the district court judge] gave a handwritten approval for second appointment for pro bono counsel. Then, for no reason, he reversed his order on May 1, 1989.

The petitioner has completely mischaracterized the facts relating to the district court's refusal to appoint a second pro bono counsel to represent her. On December 14, 1987, petitioner initially applied for appointment of counsel pursuant to the Local Rules for the District of Connecticut. (R. 2). Two days later, the district court granted her request. (R. 3). On February 17, 1988, the Clerk of the Court for the District of Connecticut appointed an attorney to represent the petitioner. (R. 6). On March 4, 1988 the petitioner's attorney filed an application for relief from his pro bono appointment

with the district court, citing case load difficulties and differences of opinion between himself and petitioner concerning litigation strategy. The application for relief was approved by the district court on March 8, 1988. (R. 7).

Petitioner waited nearly a year before filing another motion for appointment of new counsel. Petitioner's motion was granted by the court on February 17, 1989. On February 22, 1989, however, the district judge vacated his February 17, 1989 order granting petitioner's motion for appointment of counsel, having noted that petitioner had failed to follow the requirements of the Local Rules for the District of Connecticut. (R. 123). Specifically, petitioner had not filed a current financial affidavit with the court, as expressly required under Rule 29 of

the Local Rules. In addition, petitioner had failed to attach to her application a certificate of service, as required by Rule 7 of the Local Rules.

Thereafter, after all but a handful of her claims had already been dismissed, the petitioner filed another motion for appointment of new counsel. On May 1, 1989, the district court denied the petitioner's motion. (R. 159). The court explained that:

> Prior appointed counsel was permitted to withdraw after plaintiff failed to utilize his services properly. Since that time, plaintiff has pressed an inordinate number of ill-founded claims, many of them long-barred by statute of limitations. Her conduct makes any further appointment an exercise in futility.

Thus, contrary to petitioner's assertions, the district court did not deny her request for pro bono counsel "for no reason." Rather, the district court's denial of the

petitioner's request for the appointment of a second attorney, which came at a time when nearly all of plaintiff's claims had already been dismissed, was based on petitioner's failure to properly use the services of her first attorney in developing her litigation strategy and on her persistent conduct in pursuing frivolous claims.

In addition, on page twelve of her petition, the petitioner vaguely asserts that the district court's May 1, 1989 decision regarding the denial of a second pro bono attorney "was biased in that it did not stem from a meaningful participation in the case." As the Court of Appeals for the Second Circuit recognized, petitioner has never made any allegation of an extrajudicial source of

bias, as required under United States v. Grinnell Corp., 384 U.S. 563 (1966). ("Joint Appendix," at 109).

Finally, on page eleven of her petition, the petitioner asserts that "the timeframe [sic] placed on discovery by the District Court Judge essentially blocked discovery." This argument was squarely rejected by the Court of Appeals, and is completely belied by the facts. The petitioner commenced this action in December of 1987. In the time following the commencement of the action, petitioner filed discovery requests directed to only a handful of the twenty-six defendants named in her complaint. Petitioner never directed any discovery requests to the respondent Hartford Hospital. With respect to respondents Lawson and Ramsdell, petitioner waited nearly a year before

serving any discovery requests on these parties. Moreover, none of the discovery requests ultimately filed by petitioner were even remotely related to the fatal defects in petitioner's complaint which had previously been identified for the petitioner by the district court in its ruling on October 11, 1988.

Finally, the district court granted all of the petitioner's motions for extension of time to complete discovery. Indeed, the district court granted petitioner's final motion for extension of time despite its recognition that:

> [p]laintiff offers no details as to her planned further discovery. Neither has she described what discovery has been completed in the fifteen months during which this case has been pending. Her explanation is vague, the typical explanation of one who wishes to avoid detailing what has been done, and why the time to date has not been used in a good faith attempt to progress in the necessary discovery.

(Order Re Plaintiff's Motion to Extend Time to Complete Discovery, dated March 8, 1989, p. 1; R. 143). Thus, petitioner's contention that she had an inadequate opportunity to pursue discovery in this matter is wholly unsupported by the record. To the contrary, petitioner was afforded every indulgence by the district court in initiating and proceeding with discovery. She simply failed to avail herself of the many opportunities for discovery provided to her by the district court.

CONCLUSION

For the foregoing reasons, respondents, Hartford Hospital, Richard J. Lawson and Marge Ramsdell respectfully request that the Petition for Writ of Certiorari be

denied in all respects.

Respectfully submitted,

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